

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1267 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAINBOW INDUSTRIES PVT. LTD

Versus

ASSTT. COMMISSIONER

Appearance:

MR JITENDRA MALKAN for Petitioner
MS PJ DAWAWALA for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 12/05/1999

ORAL JUDGEMENT

Rule. Ms. P.J.Davawala appears and waives service of
notice of Rule. In the facts and circumstances of the
case, the matters are taken up for final hearing today.

This petition is filed against the order passed by the Commissioner (Appeals), Central Excise and Customs, Ahmedabad disposing application for stay filed by the petitioners.

It is an admitted fact that being aggrieved and dissatisfied with the order in original passed by the Authority under the Central Excise Act, 1944, appeal was filed before the appellate authority. Along with appeal, application for stay was also made. The appellate authority disposed of application and did not accede to the prayer of the petitioner-appellants of grant of stay.

It was submitted by the learned counsel for the petitioners that the point is concluded by various decision of the Supreme court as well as of this court including decisions in Special civil applications No. 11129 of 1998 and companion matters decided on February 1,1999, reiterated in Special civil application No. 2326 of 1999 and companion matters decided on April 5,1999. In the last group of matters , the Division Bench to which one of us was a party (C.K.Thakkar,J) considered the earlier Division Bench orders and allowed the petitions by directing the appellate authority to rehear application for stay moved by the petitioner-appellant and to pass appropriate order in accordance with law.

We are in agreement with the order passed earlier. In the facts and circumstances of the case, without entering into larger question and without considering the contentions raised in the petition on merits, we allow the petitions by setting aside the order passed by the appellate authority and by directing it to rehear the application for stay and to pass appropriate orders thereon within a period of four weeks from the receipt of writ of the order. No further action will be taken in the meanwhile against the appellant-petitioners. Rule is made absolute with no order as to costs.

parekh